



United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Caribbean Ecological Services Field Office  
PO Box 491  
Boquerón, PR 00622



In Reply Refer To:  
FWS/R4/CESFO/72111-001

Mr. Jaime Feliciano  
Geosyntec  
12802 Tampa Oaks Blvd., Suite 151  
Temple Terrace, FL 33647

Re: PROTECO Site, Peñuelas, Puerto Rico

Dear Mr. Feliciano:

This is in reply to your December 2, 2021, email providing additional information for the proposed investigations to be carried out at the PROTECO industrial landfill in Peñuelas, Puerto Rico. Our comments are issued in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act (16 U.S.C. 1531 et seq. as amended).

The site is under an October 2020 Administrative Order of Consent with the U.S. Environmental Protection Agency (“EPA”) to perform a Remedial Investigation/Feasibility Study at the Site. A site clearing plan was approved by the EPA on October 4, 2021. The scope of work for the proposed construction activity includes clearing the approximately 41 acres of scrub/shrub vegetation with minimal disturbance. The purpose of this project is to allow surveying of the former waste disposal units and site boundary to facilitate a site reconnaissance.

Site vegetation clearance consists of removal of brush and small trees measuring less than four (4) inches in diameter but does not include the removal of tree stumps and root mass (i.e., “grubbing” activities). During clearing, the contractor will set the cutting tools a minimum of six (6) inches from the ground surface to avoid impacting the root system or the existing soil cover. Additionally, the clearing plan indicates that areas with steep, natural, or engineered slopes at the site will not be cleared of vegetation.

A preliminary assessment from the U.S. Fish and Wildlife Service (Service) Information for Planning and Consultation (IPaC) website indicates there may be the following six (6) ESA-listed species potentially affected by the site clearing activities within the project area:

Guabairo - Puerto Rican Nightjar	<i>Caprimulgus noctitherus</i>
Puerto Rican Boa	<i>Epicrates inornatus</i> now known as <i>Chilabothrus inornatus</i>
Bariaco	<i>Trichilia triacantha</i>
Diablito Tres Cuernos	<i>Buxus vahlii</i>
<i>Eugenia woodburyana</i>	
<i>Varronia rupicola</i>	

A survey of the proposed clearing areas was conducted on November 3-4, 2021 under the supervision of Geosyntec personnel. The Puerto Rican Nightjar or Guabairo (*Caprimulgus noctitherus*) was the only ESA-listed species observed at the site in one of the two nocturnal walks. Over approximately ten individuals of the Guabairo were recorded across the entire property. The Puerto Rican boa or listed plants were not identified in any of the site surveys. There are also free ranging cattle on the site which may act as a deterrence for the Puerto Rican Nightjar to use the site for nesting.

Based on the results of the biological survey, Geosyntec is proposing to follow Service's conservation measures for the Guabairo that include:

1. All project personnel will be briefed about the potential presence of the Puerto Rican Nightjar prior to performing any the clearing activities.
2. The proposed clearing work should be conducted in areas that were surveyed and no later than January 31, 2022 when the nesting season of the Puerto Rican Nightjar begins.
3. If any listed species are sighted, all work in the area should stop and vegetation clearing should be modified to protect the area in which the sighting was made.
4. Additional conservation measures include a 20 meter buffer in the event a Puerto Rican Nightjar is found inside the vegetation clearance area either in courtship or early nesting. No vegetation clearance can take place in that area until nesting or courtship activities cease.
5. Notification of both the Service and DNER in the event a dead or injured Puerto Rican Nightjar is found.
6. For any construction, work that will occur after February 1, 2022, a qualified scientist will survey the areas to be impacted before initiating work. If Puerto Rican Nightjars are found displaying courtship behavior or nesting, the clearing contractor will be instructed to not disturb the birds and move away from the area. A 20-meter exclusion zone around the sighting area should be clearly established and enclosed with a no trespassing tape or similar high visibility markings. The contractor shall not begin any type of work in that area until further searches are conducted by a qualified biologist to verify there is no nesting or brooding activity. The qualified biologist shall also consider that any Puerto Rican Nightjar displaying distraction behavior is consistent with the presence of an active nest or nestlings. Such an observation shall be tagged as a nesting site as well, even though a nest may not be observed as present.
7. No heavy equipment (e.g., bulldozers or cutters) shall be allowed at or near the established 20-meter exclusion zone. This type of machinery shall not be used in this area until the Puerto Rican Nightjar chicks leave the nesting site on their own, as verified by qualified biologist. Relocation of individuals or their nest is not authorized.

It is Geosyntec's determination, that with the above conservation and minimization measures, the EPA-approved Clearing Plan may affect, but is not likely to have an adverse effect the Guabairo. We have reviewed the information provided in your letter and our files and concur with your determination that the proposed action may affect, but is not likely to adversely affect, the above referenced species. No adverse impacts to designated critical habitat are anticipated.

In view of this, we believe that requirements of section 7 of the Endangered Species Act (Act) have been satisfied. However, obligations under section 7 of the Act must be reconsidered if: (1) new information reveals impacts of this identified action that may affect listed species or critical habitat in a manner that was not previously considered; (2) this action is subsequently modified in a manner not previously considered in this assessment; or, (3) a new species is listed or critical habitat determined that may be affected by the identified action.

Thank you for the opportunity to comment on his action, if you have any questions please contact Felix Lopez of my staff at (787) 510-5208.

Sincerely yours,

Edwin E. Muñiz  
Field Supervisor

fhl

cc:

DNER, San Juan

EPA, San Juan